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HON. JOSEPH WILLIAMS.

ASSOCIATE JUSTICE OF THE TERRITORY, 1838, AND FIRST CHIEF JUSTICE
OF THE STATE OF IOWA, 1847.

BY HON. T. S. PARVIN.

 F the history of the early pioneers of Iowa whose memories come like a sweet fragrance imparting their perfume to the present, many

“————are gone from us forever—

Longer here they might not stay;
They have reached a fairer region,
Far away, far away!”

* * * * *

“The world goes on the same,
Scarce a leaf on the elm tree flutters;
While the blowing breath of the summer woods
Lifts in through the half open shutters.”

The biography of our old and early friend is so closely interwoven with the early history of the State, that it may prove interesting, if not necessary, that I should introduce it with a brief sketch of the Territory, in which he jointly with two others (Mason and Wilson) was for a period extending through the entire territorial existence of Iowa to administer her laws and dispense justice far and wide among her people.

Upon the creation of the territorial government of Iowa by

an act of Congress enacted June 17th, 1838, to take effect July 4th, the President was authorized and empowered to appoint the executive and judicial officers of the Territory.

A wiser and better selection on the whole could not have been made than was made by the President (Van Buren) in his appointees for the new Territory, to whom, however, does not belong solely the credit for the judicious exercise of this power; more largely is the credit due to our fellow citizen, Gen. Geo. W. Jones, of Dubuque, who still resides among us, hale and hearty at the advanced age of four score and ten years, to enjoy the honors and witness the outgrowth of his early services, and who at the time of the separation of the "Iowa District" from the Territory of Wisconsin, of which for two previous years it had constituted a part, and for two years yet preceding, dating back to April, 1834, Iowa with Wisconsin had constituted an integral portion of the Territory of Michigan, which he had represented in Congress, first as the Delegate from Michigan and then from Wisconsin.

Upon the creation of the Territory of Wisconsin in 1836, the Delegate (Gen. Jones) had effected an entirely "new departure" in the political practices which had obtained in all previous territorial history. In the organization of new Territories, previous to his time and that of President Jackson, the appointees had all been, if not "carpet baggers," as known in more recent history, at least men coming or going rather into the new Territory with "carpet bags" bearing their worldly goods and sometimes their worldly honors in the commissions they contained.

So successful had Gen. Jones been, when Wisconsin was separated from Michigan, in securing, from Gen. President Jackson, the appointment of his personal friends, residents of the Territory, that he essayed to secure the like success in his appointments for Iowa, in which, to a very large extent, he was likewise successful.

Two of the Justices of the Supreme Court, the Hon. Chas. Mason, a practicing lawyer of Burlington, and the Hon.

Thomas S. Wilson, likewise a practicing attorney in Dubuque, were selected and suggested for nomination by Gen. Jones, without their knowledge or consent, and it showed the superior discernment of the Delegate in their selection as they both proved preëminently fitted for the service they were to perform. The United States Marshal, Gen. Francis Gehon, a miner of Dubuque, and Cyrus S. Jacobs, an attorney of Burlington, were selected, the latter for the position of United States District Attorney, both of them very competent men. Mr. Jacobs was soon, however, to fall in a personal rencounter in the streets of Burlington, and his position given to the Hon. Chas. Weston, of Davenport.

The exceptions in the way of appointees from abroad were the Governor, Robert Lucas, of Ohio; the Secretary of the Territory, Wm. B. Conway, of Pittsburg, Pennsylvania; and the subject of this sketch, Joseph Williams, then practicing law in the village or town of Hollidaysburg, also in Pennsylvania.

Gov. Lucas owed his appointment in part to the fact that he had presided over the Democratic convention, in 1832, which had nominated Van Buren, now President, for Vice President, as the colleague during the second term of President Jackson.

Mr. Conway owed his appointment, and it was the only one of all the appointments made from political considerations, to the fact that he was the editor of a radical Democratic paper in Pittsburg, which had strongly advocated the nomination and election, first of Gen. Jackson, and then of Martin Van Buren, his successor, for the Presidency.

Judge Williams owed his appointment to the consideration of personal friendship of one who had been his early associate as a student, and later as a lawyer, and who subsequently attained to great eminence as a jurist and a statesman in the Republic, during the war period; Jeremiah S. Black, who became Chief Justice of the Supreme Court of Pennsylvania and Attorney General and Secretary of State in the national government during the administration of President Buchanan.

The first court ever held in Iowa was while it yet constituted a part of Wisconsin, and was held in Dubuque County, in the early spring of 1837, when it with Des Moines County constituted the only two counties west of the Mississippi river, and they were both "attached for judicial purposes to the county of *Iowa*" in Wisconsin. By an act of the Legislature of Michigan, sitting at that time in the city of Detroit, and approved October 9th, 1829 (a long time as we measure time at present in our State history)—all "the territory south of the Wisconsin river, west of Lake Michigan, north of the territorial boundary of Illinois, and east of the Mississippi river" was created into a new county called "*Iowa*," and its seat of justice fixed at Mineral Point, an old and small town a little north of Galena. This is the *first time* we meet with the word *Iowa* as applied to a tract of territory and south of the Wisconsin river, and "it is more than probable" (says our old friend Judge Murdock, of Clayton County, who has done much toward elucidating the early history of Iowa) "that this and the subsequent acts of said Territory in organizing the counties of Dubuque and Des Moines west of the Mississippi river, together with their attachment to this "*Iowa*" County east of the river for judicial purposes, that suggested the name of "*Iowa*" for the new Territory created in July, 1838, west of the great river;" in this we concur.

It is much to be regretted that we know nothing more definitely of *the origin* of this name; the name and the biography of the man who at that early date introduced the bill which perpetuated the name of "*Iowa*" in the civil government of the Territory; together with the circumstances that prompted him so to attach the name of "*Iowa*" to the new country. It would certainly be an interesting fact in the records of the State, could we learn more of the man and of the circumstances connected with his use of the name "*Iowa*" in that connection. It has been said, and generally supposed to be correct, that the Territory of Iowa took its name from the "*Iowa River*" and the Iowa river from the Indian tribe of

that name living upon its banks; but here we find the name of "Iowa" dating back to the legislative history in Michigan and Wisconsin as early as 1829, and at a time when little or nothing was known of either the Indians or the river which later bore their name "Iowa." It is certainly a subject worthy the researches of those connected with the "Historical Department" of the government at Des Moines, to investigate this subject and learn if possible, whence and how the name came to be selected as that for "the county of Iowa," which antedated, by several years, the creation either of the territorial governments of Wisconsin and Iowa.

Upon my arrival at an early date after the creation, by act of Congress, of the Territory of Iowa and locating at Burlington, I found that Chief Justice Mason was absent, visiting his native state, New York. Judge Williams had not then arrived, so I betook myself to Dubuque, where I was admitted to the practice of the law by Judge Wilson, one of the associate justices recently appointed. Soon after I was commissioned by the Governor to go to Baltimore for the purpose of purchasing the Territorial Library, for which Congress had made an appropriation in the organic act of \$5,000. I journeyed by stage, or rather a hack weekly line (you may spell it with two "ees" or an "e" and an "a" and speak the truth in both cases) from Rock Island to Chicago, which was then a small village of less than five thousand inhabitants. I tarried there for a week for the purpose of spying out the land and would not have given then \$5,000 for the best acre in the city,—it was quite a mud hole, its streets much lower than the level of the lake from which they were separated only by a ridge of sand washed upon the shore line. I assisted a friend, who had been my old college professor and whose guest I was, in gathering vegetables for dinner one day, taken from his grounds, upon which later the government post office, the Grand Pacific and the Great Northern Hotel were erected. A part of his land was used as a cow pasture and we had quite a distance to travel over unimproved lots

from his pasture lot and his vegetable farm to his residence on the north side of the river.

From Chicago I took a steamer to Cleveland and then by stage to Columbus, before taking the National Pike to Cumberland, Maryland, and Washington City. Upon registering my name at the hotel, the clerk observing my place of residence said to me, "you should have been here last night,—a gentleman stopped here over night on his way to your home in Iowa, bound for Burlington." I looked at the register and saw recorded, as he always wrote it, "J. Williams," upon which the clerk said "they called him Joe," and so they did and so they had before and continued to do so for many years later. "He was," said the clerk, "the most jovial fellow and the best company I ever met. There was a company of negro minstrels here and they treated the hotel guests to some musical performance after their return from the hall. 'Joe' Williams was for a while," the clerk said, "a silent listener, when all at once he took a fiddle (for so he called the violin) from one of the darkies and commenced to play, joining in with the others and keeping time to their music as if he had been trained to the performance, greatly to their satisfaction and much to the delight of the audience, and no one seemed to enjoy it more than did 'Joe' himself."

I had, through all my earlier years and student life, been accustomed to look upon the Judges of the Supreme Court as men venerable for their age and appearance, renowned for their dignity and clothed, as they had been, in purple robes of office, and now to find that one of those under whom I was to commence my legal practice was, as we might say, a "hail fellow well met" in every jovial company, was not only a surprise, but a shock to my feelings from which I never wholly recovered. I learned, however, in later years that a man can have two natures, for upon the bench Joe Williams was *the* "judge," a man of dignity, self composure and who ever commanded the respect of the bar and of the public; once off the bench, he became "Joe Williams" and was the life and soul

of every company into which he entered, creating more amusement, giving more interest to the hour, by his anecdotes, his wit and his songs than any other of the company, however goodly it might be.

Of course, having consummated the purpose of my visit east and returned to my distant home in Iowa, I was anxious to meet the gentleman of whom I had for the first time heard in Columbus. The evening of my arrival I met him in the Governor's parlor (for I was at the time an inmate of the house with the Governor and sharing with him his room), and then and there began a personal acquaintance with the subject of my sketch, which continued to the period of his death, and I was quite as long and as intimately thrown into close communion with him, by reason of our social and legal relationship, as almost any other man. He was, as it were, sandwiched, both personally and locally, between his associate judges as he was assigned to the second or middle judicial district, and took up his residence at Bloomington, now Muscatine.

In age Judge Williams was the senior of his associates, being at the time of his appointment thirty-seven years of age; while the Chief Justice, Mason, was but thirty-one, and the younger of the trio, Wilson, only twenty-six. There was also a very great dissimilarity in their personal characteristics, as also in their early lives.

Chas. Mason was a man of tall stature, very reserved, or seemingly so, in his demeanor and especially to strangers; it was only to those with whom he was intimately acquainted that this apparent sternness of character was thrown aside. He was a New Yorker, had been educated at West Point, was graduated at the head of his class, having for associate students a number of men who afterwards became very distinguished both in the civil and military services of the country as well as against it,—Jefferson Davis and Gen. Robert E. Lee were two of his class mates during those four years and were graduated at the same time. As a student he was superior to them all, having a mathematical turn of mind and from his

thorough mastery of the higher mathematics he became a very close and judicial reasoner and so was able to analyze the arguments of counsel, sift the intricacies of a case and reach his conclusion with unerring judgment. He continued a close student through life, growing with his years in a knowledge of the law and its allied sciences which he mastered in all the positions to which, later in life, he was called.

His younger associate, Judge Wilson, came of a military family and he too had graduated with honor from a Pennsylvania (Jefferson) college. Raised in Ohio he had moved to Iowa and entered upon the practice of the law upon his arrival at the age of majority, and had already won distinction as an able advocate and attorney in the city in which he then and through all his subsequent life made his home, Dubuque, Iowa.

Their associate, Judge Williams, was not a student, he could never have graduated with honor from West Point, if from any other collegiate institution, he was too fond of company, too much addicted to its pleasures to burn the midnight lamp in the acquisition of knowledge; he was, however, an observing man, possessed of a remarkable memory and had a wonderful faculty of *absorbing* knowledge and appropriating to his own useful purposes the knowledge which others had acquired by long and diligent study. He would sit, as he has often told me, for hours in the court room listening to the arguments of counsel and to the opinions of the learned judge, carefully noting what he heard and saw, and at the close of the day's labors he had mastered more of the mysteries of the law than any student could have done from a week or a month's study in a law office. One who, like ourself, had known Judge Williams long and practiced under him has had this to say, "he was distinguished above all others in the early territorial days for his humor, his wit and for his musical talent, which, in spite of himself and the dignity of his office, led him to mingle in all crowds as a hail fellow; yet, we must not judge from this part of his history that he was dissipated or that he

encouraged dissipation in others, far from it; for during our long acquaintance with him we never saw him intoxicated, he allowed no man to become his peer in the practice and dignity of a gentleman or in his support of those principles of temperance and morality, which are the ground work of a well ordered society. He was not," he says, "a profound lawyer, but he had the quickness and sagacity to see the right of every question as well as the courage and the manhood to seize upon it and declare his convictions irrespective of parties or favorites, and it was these qualities that made him a most popular judge" for through his long judicial career coëval with the territorial period he was the "most popular judge" of the three, and his memory ever since calls up the universal popularity with which he was regarded by those who knew him as a man and judge as well as those whose knowledge consists only of the stories that have been told of him by his old time associates.

Judge Williams with his associates served through the entire territorial period, 1838-46. In December, 1846, Iowa was admitted into the Union as an independent State.

The constitution recently adopted by the people contained a clause, providing that, the Judges of the Supreme Court should continue in office until their successors were elected.

The first State Legislature contained a "possum," he should have been named a "skunk." The parties, Democrats and Whigs, were equally divided on joint ballot and this one man held the balance of power. He was mulish, stubborn, selfish, unprincipled (and if I had any more adjectives at my disposal I would use them), he would neither vote for the nominees of either of the parties for United States Senators or Supreme Judges of the State, nor would he stick to his own man, so that when either party might, for the purpose of an election, join with him he would fly the track,—the session closed and Iowa remained unrepresented two years in the United States Senate, through the machinations of this man, we will not name him.

The Governor (Ansel Briggs) upon the adjournment of

the Legislature appointed Joseph Williams Chief Justice in place of Chas. Mason, who had resigned, and in his own place he appointed John F. Kinney, a leading lawyer of the State, a man of ability, a citizen of Ft. Madison and who had presided over the Democratic convention which nominated the officers elected to inaugurate the State government.

Judge Kinney, after serving the State honorably, was appointed to positions of honor and trust as Judge of the Supreme Court in some two or three Territories, and is now, at the age of four score and more years, an honored citizen of San Diego, California, where the writer had the pleasure of spending an evening with him two years ago. The editors of "THE HISTORICAL RECORD," or the "*Annals of Iowa*" would render a great public service could they secure the aid of Judge Kinney to write up the history of that first Convention, of which we were an active member, and of the first Legislature, of whose misdeeds, from the causes named, we were an attentive though disgusted observer, as well as his recollections of men and the measures of those early days. Judge Wilson the remaining of the Judges of the Territory was reappointed also.

Were we to indulge in the recital of anecdotes of our old friend THE RECORD might not have room to contain them; we will content ourself therefore with one, as having an interesting relation to, not only his connection with the bench, but, the renewal of appointments of himself and his associates. We had the anecdote from the Judge himself upon his return from Washington.

The Judges had been appointed (in 1838) for a term of four years and their term of service expired during the Presidency ("accidental" it was called by the enemies within his party lines) of John Tyler, who had been made famous by his connection with "Old Tippecanoe" in the "hard cider campaign" in 1840 when the land rang out with the song "Tippecanoe and Tyler too." Neither of his associates, Mason or Wilson, cared particularly about reappointment, were quite ready, and rather preferred indeed, to return to the practice of their

profession. Not so, however, with Judge Williams,—he sought a reappointment, preferring the ease of a judicial life to that of one more active in the profession, and so he betook himself to Washington to curry favor with the President. In those days he had to travel by steamer to St. Louis, up the Ohio to Maysville (which was then the terminus of the great “National Pike” commencing at Cumberland, Maryland). Taking a stage at Maysville he soon found himself seated in front of a lady, pretty, brilliant and entertaining. The Judge was, both by nature and practice, a ladies’ man and sought to ingratiate himself into her favor by making himself as agreeable as possible, which was no difficult task for he was a gentleman of Chesterfieldian manners. He communicated to the lady his name, his rank and the purpose of his journey eastward, and strange to say, for the Judge was not a bashful man, he never learned her name, or her position. Reaching Baltimore they separated, the Judge stopping to visit some friends, and a few days later wended his way to Washington, where, having made his toilet at his hotel, he called upon his excellency John Tyler, President of the United States. Upon his name being announced he was received, much to the surprise of the Judge, with unusual courtesy and kindness of manner, bade take a seat and immediately the President entered into familiar conversation with him as though he had known him a life-long period, asking him many questions about Iowa, in whose history he seemed to take special delight, of his associates in office and other public men of the Territory, until the Judge quite forgot the purpose for which he had come; rallying, however, he ventured to suggest the matter of his reappointment to the President. “Oh,” says the President, “that matter is all fixed to your satisfaction, Judge,” and immediately commenced to talk upon other subjects. After a little the Judge renewed his attack, when the President said, “your appointment has been made and the Secretary will furnish you with your commission when you are ready to return to your distant home.” “But,” says the Judge,

"I could not think of going back with a commission of reappointment and my associates being left out in the cold." "That matter too you will find all to your satisfaction, Judge: I have reappointed all three of you. By the way, Judge," said the President, "there is a lady in the adjoining room who would I know be much pleased to meet you and I have to request that you join me in a call upon her." The Judge had the courage to say that he was quite sure it would afford him as great a pleasure to meet the lady (although he did not know who she was), so accompanying the President they entered the golden room when a lady, as we have said, beautiful in appearance, graceful in manner, and with an earnestness quite unusual among strangers, the good woman rushed to the Judge, seized him by the hand and cordially greeted him. As soon as the Judge could recover from his astonishment the President said "Judge Williams, Mrs. Tyler, my wife," and lo and behold! she was the woman with whom he had traveled some three days and as many nights over the mountains and through the valleys from the Ohio to the Potomac. "I hope, Judge," said the lady, "you have found everything to your satisfaction; I spoke to the President as I soon as I got home and asked him to reappoint you and your associates to office, and he promised he would do it." "Yes," said the Judge, "he has," and thereupon the three joined in familiar conversation as though they had known each other many a year.

When the news of the reappointment came to Iowa I well remember the pleasure with which it was greeted, for the three judges were acceptable to all citizens, irrespective of party.

I am not aware that the anecdote ever appeared *in print*, but it was circulated around among those of the "household of faith" and we enjoyed many a hearty laugh over it.

After serving the people of Iowa, both Territory and State, creditably for many years the Judge retired from the bench in Iowa, and was in 1857 appointed, by President Buchanan, one of the District Judges of the the Territory of Kansas, and in this new field he soon became a popular judge and citizen

and was highly honored by the bar and by the people of his district. He was assigned to the southern district of the Territory and located and made a claim adjoining Ft. Scott, then occupied by government troops and later became quite a prominent city in the State. This land afterwards became very valuable, so that in the declining years of his life the Judge found himself possessed of a fortune; it was both timely and welcome. The Judge was in moneyed matters very improvident; he always lived up to and a little beyond his income; he was generous to a fault, could never say "no." I remember one occasion, after my marriage, when we were going to the market together, meeting a beggar on the way who accosted the Judge asking for aid; he took from his vest pocket a dollar bill, all that he had with him, and without a word gave it to the beggar and when we reached the butcher's stall he had to buy his morning breakfast on credit. This was but a sample of his way of doing business through life.

When he had realized a large sum from the sale of a portion of his land he came back to Muscatine, and happening there on a visit I met him first in the street, when he accosted me in a familiar way and asked "how much do I owe you? I have been around among all the citizens paying my old debts and now I want to pay you;" I replied "you owe me nothing, Judge." "Oh, yes, I do owe you a good deal, you used to pay my bills round on the circuit and loan me money and I know I am indebted to you in a considerable sum: will \$200 satisfy you?" "No sir," I promptly said, "neither \$200 nor two cents, the debt has long since been paid and we will now talk upon some other subject." It was hard to get rid of him, however, or rather that subject, for he insisted upon the payment, remarking that "you are the only one who has refused to take what I offered him." I said "that was honor enough, standing thus alone among the many." It was the last time I met the friend of my early youth, with whom I had labored in the church, in the Sabbath school, in the literary clubs, in temperance and political circles; everywhere he was at home, a ready,

indeed the most ready speaker of all the pioneer speakers of Iowa; he could talk readily upon any subject and both amuse and instruct his hearers and had no equal in this department of public life. He could tell an anecdote or sing a song better than any other, was a fine conversationalist and withal a *ventriloquist* of no mean ability, a power which he used occasionally to the surprise and amusement of the company, whether ladies or gentlemen, or both.

The next we hear of the Judge was during the early days of the War of the Rebellion. President Lincoln who had learned of his judicial services in Kansas, was so pleased thereat, that he transferred him to Tennessee and appointed him Judge of the Court which was held in Memphis and where he had the pleasure of meeting many of the Union soldiers from Iowa, his old home acquaintances. After the war was over and he had visited Iowa he returned again to Kansas and died at Ft. Scott in March, 1871. His widow survived him two years and died at Muscatine in September, 1873. Both were buried in the cemetery on the bluff overlooking the Father of Waters and the city (Muscatine) in which they had spent the greater portion of their married and happy life.

All honor is due to him and others of the departed "fathers of the State."

Let us fondly hope that so long as the monument, the free institutions of our State, which they erected, shall remain, that their memories may not be forgotten and so long as the great rivers of our borders shall flow to a perpetual union, may the children and the children's children of Iowa, treasure in their memories and speak kindly of the deeds of those who before their day and generation, labored so successfully to "make Iowa" what she is to-day, the most beautiful State in the valley, renowned more for the virtue, the intelligence and the patriotism of her people, than even the richness and fertility of her soil and the beauty of her prairies.

Joseph Williams was born in Huntington, Westmoreland

County, Pennsylvania, December 8th, 1801. In his youth he led a wayward life and later, to his bosom friends he related, that, "he was taken by a distinguished citizen of his native State from a company of travelling mountebanks and made a man of," and with honor and respect would he refer to that benefactor with all the expressions of a son for a departed parent.

He had two brothers, one of whom became very prominent in our history, Major William Williams, of Ft. Dodge, for whose heroic services in the Indian massacre of Spirit Lake in 1857, the State and her people have testified their honor and respect. He was the senior of the family, the father dying while he was yet young, and Joseph, a mere boy, together with his other brother, Robert, who later located in, and became a judge of, the county court in Muscatine, were cared for by the elder brother, William.

Joseph had for a boon companion in the reading of the law Jeremiah S. Black, to whom we have referred and who afterwards became so distinguished as a jurist. He engaged in the practice of the law at Hollidaysburg and was there when notice of his appointment as one of the judges of Iowa reached him. He had married in 1827, Mary Rogers, a sister of Judge Meason (who later followed him to Iowa and also located in Muscatine where several of his children married and where his descendants still live). In the fall following his arrival the Judge was joined by his family, consisting of his wife and five children—four sons, Thos. Meason, John Kennedy, William, and Joseph William, and the daughter Miss Georgia Anna. The boys accompanied their father upon his removal to Kansas when we lost all track of them. In their early days they were very good boys, having a devoted christian and home mother to look after their early training. What was their future destiny we do not know save that "they are not." The daughter was educated at our best schools and married Mr. William C. Brewster, of Muscatine, a young banker who had inherited a fortune to which he added largely by his great financial ability in New York City, to which he

had removed. Their only child, a daughter, by her beauty, her accomplishments and her money won a title, by her marriage to a French count, and became enrolled among the American heiressess who departing from the simplicity of their fathers had joined the ranks ennobled by birth. It is to be hoped that love had more to do with these maternal matches than the busy world knows of.

Mrs. Williams had united, with her husband, in early married life with the Methodist Episcopal Church and they joined with those who in 1839, founded the "first Methodist Church in Muscatine County" and remained connected therewith as active workers until their removal from the State. It was well that the impress of the active services of this useful family were permanently left upon the social organizations in the city in which for many years they made their happy home.

The Judge was a loving husband, an indulgent—yea, over-indulgent, father, a kind neighbor and a most useful citizen in all the higher walks of life. He was ever ready, and foremost indeed, in all enterprises having for their object the welfare of the people, of the community and the honor and glory of the State. It is better for the world that such men live in it, and when they die that pleasant memories linger long after they have passed away.

The pages of a magazine are too few to properly portray the history of such a man, one, who for so many years, and so thoroughly during all these years, was identified with every good work that a more fitting sketch is due than we can possibly present in these few pages.

Looking back over the past, however, at this late day

"I would not pass on
'Till I had blest their memories, and paid
Those thanks, which God appointed a reward
Of manly virtue."

Of the early associates of the writer and of the subject of this sketch, but few, very few indeed, remain—yet

"All are not taken—there are left behind
 Living beloveds tender looks to bring
 And make the daylight still a happy thing."

When those shall have joined the throng that have gone before, and united their voices with loved ones on the better shore, may there be found, among their living successors, some one with.

"———a tongue to utter
 The words that should be said
 Of their worth."———

Cedar Rapids, November 28th, 1895.

JUDGE WRIGHT'S LAST LECTURE BEFORE THE LAW CLASS.*

THE PIONEER BAR OF IOWA.

EIGHTEEN FORTY. At a river landing a young man steps from a steamer and asks a stranger—"What is the population of the Territory of Iowa?" "Forty to forty-two thousand."

Eighteen ninety-five. "Mr. Auditor, can you tell me the population of Iowa?" "Approximately, two millions." "Surely," say bystanders, "for our annual increase has been from forty to fifty thousand."

Eighteen Forty. Upon a stage coach with nine inside and three on top. "Driver, how far is it to Iowa City?" "Twelve miles." "How long will it take us to reach the place?" "About five hours, if we can find the bottom of the road."

□ Eighteen ninety-five. C. R. I. & P. train. "Conductor, how far to Iowa City?" "Twelve miles." "How long before we shall be there?" "Eighteen minutes."

*Just before the University Commencement last June, the late Hon. George G. Wright delivered this lecture at Close Hall before the Law Class and the public. It has proved to be his last lecture—almost his last public address—as was prophetically foreshadowed by an utterance he dropped at the time, seemingly unconscious of its significance. He gave the manuscript to the Society, but asked that its publication be delayed, as he desired to use it again.

Eighteen forty-six. "General, how many men can you furnish for the Mexican War?" "One regiment, perhaps two."

Eighteen sixty-one. "Governor, how many men can you send to the defense of the Union?" "Eighty-three thousand—twice that number if needed."

These questions and answers show the changes wrought in fifty-five years, to the beginning of which I am to call your attention for an hour.

The first of these scenes belongs to the *old*—the then, the second to the *new*—the now. To me, as to any other of our noble State, they speak volumes, showing our growth, progress and development.

To-day I propose to direct your attention to this *old*, not, it is true, its general history, but as connected with a class or profession from which, however, I tried in my way to learn much of the *how* and the *why* of our success and advancement.

My purpose is to dig up some memories connected with the profession of my choice *in the early days*. Than the last few things could be more difficult. Difficult now, and here especially, because before me are many vastly more familiar with the general subject than myself. For there are here members of the bar, and *one* especially, who thirty years ago occupied a seat upon the district and supreme court bench, before whom in legal and general history I feel as a child. Difficult, too, because of the abundant material and especially of the superiority of the means of the present. And though the task is both difficult and devious, for reasons which I will not take time to state, I come at once to my theme.

My professional life in Iowa dates from early in 1840. I was not admitted to practice, however, in the higher courts until April, 1840, and this at a court in Fairfield, held by Judge Mason, the Chief Justice of the Territory. At this time we must bear in mind that courts were not held west of Jefferson and Van Buren counties. The immense and rich country beyond these counties and to the south line of the Territory were in the undisputed possession of the Indian, and but few of the counties north of Henry and Jefferson were organized, or if so, they had but few inhabitants. Wash-

ington (once called Slaughter), Johnson, Cedar, Linn, Delaware, and Jones, and even Jackson and Clayton, with a population now of 225,000 compared with 9,000 in 1840, barely had a name; while the new, rich and populous counties of Davis, Wapello, Marion, Monroe, Keokuk, Madison, Buchanan, Blackhawk, Warren, Fayette, Madison, Polk, and other counties, with a population of 340,000, and now teeming with wealth and industry, were without names and unknown to the world or to our legislation for years afterward.

In the new county of Jefferson I met as I now remember, at the very first term, Judge Mason, Jas. W. Grimes, J. C. Hall, Jas. W. Woods, Hugh T. Reid, Alfred Rich, Olin Weld, I. N. Lewis, Cyrus Olney, M. D. Browning, Richard Humphreys, J. B. Teas, H. W. and W. N. Starr, and W. H. Wallace. There were doubtless others whose names do not occur to me.

From the few cases on the calendar, the prospect was anything but encouraging to one just entering upon the practice. And yet I should be unjust to myself and to those I then met, if I did not, as I do, here testify to their hearty, hospitable greeting to a young, and somewhat diffident young man, for their ready and proffered aid to him when just entering upon professional life.

Of those named and of others with whom I was in after years brought into professional contact, all are gone. Many of them have stood among the ablest lawyers of the State and occupied the highest judicial positions. Among them I may be allowed to mention the judge then presiding, admitted by all to be a very clear headed lawyer, who presided for six years afterwards in the district and supreme court, and served with distinction as Commissioner of Patents at the Federal Capital—Cyrus Olney, who was afterwards one of our ablest judges on the district bench, where he remained until transferred to a similar position in the Territory of Oregon—W. H. Wallace, after a member of the Territorial Council, presiding officer thereof, Governor of Washington and Idaho Ter-

ritories, and delegate in Congress for both—J. W. Grimes, an influential member of our State General Assembly and Governor of the State, and United States Senator; while there he was the acknowledged peer of the ablest members of the Senate of the United States—J. C. Hall, afterwards a member of two constitutional conventions, of the General Assembly, and Judge of the Supreme Court.

These men and others of their class and time were brought up under the strict rules and in the technical forms of our common law. This was before the days of the code and revisions. They were the grand old guard of the common law, believing in the maxim that *experience* (not legislative discretion or indiscretion) framed the law, and were even ready to agree with Lord Coke that "it is dangerous to introduce new things," especially in the law. For the literal minded judge would occasionally defy what he esteemed the effete notions of Blackstone, and insist that the body of the time-honored system taught by these sages, was the cloud and the pillar which guided their plodding and climbing feet.

This time was not without its incidents. Here it was that I underwent the first examination for admission to practice in our courts. A little, red haired man was also an applicant for admission, hair standing on end; he had, I believe, taught school in Cedar County, tried cases before the justices on Saturday, and now sought higher honors. An American student of the Inner Temple at London, has said that all that was necessary to a certificate for admission as "barrister" there, was to show that "*you had eaten your dinner regularly for the appointed term.*" And in the same spirit of extravagance it is said that one need in Iowa only answer affirmatively these questions. "Do you play the game of brag?" "Can you make a toddy?" "Can you drink it?"

In the instance which I am now relating, the poor candidate was subjected to inquiries infinitely more difficult than these. For three hours, the committee assisted by not less than a dozen lawyers, plied him with every conceivable question in

medicine, education, politics, law and the whole of ethics and etiquette. I should be outside the truth if I did not state, as I do most cheerfully, that the ambitious disciple succeeded, by chance or otherwise, in answering *one* question in twenty-five very correctly. The committee next morning recommended that he be allowed to practice before justices of the peace, and he left much elated with his success. This same saffron head appeared ten years or more afterwards in one of the new counties driving cattle, and though such employment is not regarded as fostering the christian graces, I really thought he was in a much happier frame of mind than when in April, 1841, he passed the merciless examination.

It was at this time also, as I remember, though the printed account fixes a September afternoon, that the celebrated case of the People vs. Job Parker* was tried and determined.

In these days of railroads, comfortable stage coaches, comparatively well kept roads, well arranged hotels, elegant and commodious residences, we can hardly realize the trials and hardships of law practice forty years ago. A writer in an English magazine in speaking of their circuit and its scenery says, among other things, "He had such lying off objects as the Isle of Wight, Weymouth, Tyne, Fahnstock, and the Cheddar and Char. The judges traveled with sober haste, drawn by four horses. Our baggage master was in the van, and our *wine cellar*, under the care of an official, was at each circuit town."

Think of these things, judges and lawyers, in the early days of Iowa. Think of the forded Iowa, the overflowing Cedar, the muddy Turkey, the deceitful English, the quagmire Fox Run, the Skunk and Coon, the Wapsy, and even for the most part the beautiful, placid and gentle Des Moines; and think of them as I have known them, without bridges, without boats, out of their banks and without bottom. Think too of the

*It was a case on appeal from a Justice Court. The transcript of record was a most remarkable document, withheld from publication out of regard to living friends of the Justice.

muddy roads and bottomless sloughs, of the mere blind paths from one village or settlement to another. Think also of the hotels, or the taverns as they were called, and of the bedrooms and fires.

I can see yet the tin wash pans with buckets of water and dippers ranged on a board on the back porch, or in black bar-room, the crash towels on rollers, the old brush and comb with hairs enough in each, to set up a wig maker in no very small business. I can see yet the swimming islands of fat and lean bacon, the hammer proof eggs, the rich golden biscuit, the pies of wonderful tenacity, the plates, cups and saucers and glasses filled with marmalade, jellies and all imaginable mixtures made of the plum, the crab-apple and the pumpkin.

I think I can smell and taste that same coffee served in cups, black enough to enjoy the right of suffrage, and weak enough to win the indorsement of any committees. Remember too, a dozen or more huddled in one room with too much ventilation or none, sleeping on the floor and sometimes not at all; our horses in sheds or without any shelter after going through rain, and sleet, and cold, or heat. I say think of all these and innumerable others, to which I might refer and contrast them with the picture of the English Circuit, or even with our present conveniences and advantages and yet those days and scenes are not to be despised. They were happy days—necessary days and scenes. All classes then had their hardships. It can never well be otherwise in the settlement of a new country. We but had our share else we could not expect, nor did we deserve success. True men, likewise, must go through the *rough brake* to come out tried and true. Amid such scenes it is, that we can only well and thoroughly test true, real worth, that genuine nature which oftener is found in lowly shed, with smoky rafters, than in tapestried hall, and courts of princes.

And in this connection allow me to refer to a well deserving class of men, our early hosts found by us, on the prairies or in the timber, while plodding our weary way from term to term over the circuit.

No one of extensive practice, in the early days, but remembers them. They kept the lawyers' tavern. We found them as it were by professional instinct. They aided us not a little as lawyers in our early struggles. We shall be untrue to ourselves if we can forget them, their children, or their good deeds.

But I spoke awhile since of early trials. Oh! those grand old, if little, trifles. They are to us like the limited square log school house, to the teacher in his A-B, abs and B-A, bas, and yet like a battle field in which we had our reconnoiterings, our skirmishes, our flank movements, our advances, our successes and defeats—our complete repulses and victories. And lest we should in our admiration of the present be led to forget these let me describe some of them, and refer to some incidents connected therewith.

We held court for several terms in one of the upper rooms of the jail known as the old jail of K—. A room about twenty by twenty-five feet square. This, however, was elegant and paradisaic compared with others.

Our first term in B— for the first half was held in the room about twenty feet square, where we all ate and slept. The other half was held in a log house without floor, the judge occupying a block as a judicial bench, the clerk a like substitute with a small rough board table as his desk and the lawyers a plank placed upon logs. The grand jury was kept to one side of what was called "a run" between two hills on the prairie, with officers to keep off as best they could the curious crowd; while the petit jury in the case tried, was kept in the like manner on the opposite side. So in B. court was held in a log cabin five miles from the present county seat in the midst of thick timber. The good old lady of the house removed her pots and kettles to the shelter of a neighboring tree, to give room for the learned judge and the officers of the law. That most estimable Judge, James P. Carleton, was perched upon a three legged stool, with a bench at the left hand for the clerk. A committee examined a student for admission while seated on the ground and logs away from the court at this same session.

Behind a walnut board placed on two barrels, the clerk sat at one end of said board and the lawyers at the other. The petit jury when deliberating on the only case tried were seated on some timber on the prairie, the sheriff standing guard.

In Story County the court was held by Judge C. J. Mc—— in a small log house. The petit jury occupied a stable; one of the jurors being kicked by a horse while in the jury room. The grand jury had a retired spot on the prairie where rumor says they discussed many matters, including a jug of whiskey—assisted in the last by the judge “at the earnest solicitation of the jury.”

One more county, Jackson, and I leave these court house reminiscences, though I might refer to many others. The room and furniture were such as I have already described, except that the building was an unfinished frame, and in it were some barrels (belonging to the owner, a merchant), one on rollers being filled with molasses.

His Honor, T. S. Wilson on his stool or bench; a criminal trial on hand; Judge G—— defending. The house was on the banks of the Mississippi and the crowd, the day being warm and pleasant, feeling no special interest in the trial, had for the most part left the court and were enjoying themselves on the grassy bank of the stream. The evidence is concluded, and after a speech from the prosecution, Judge G—— rose to reply. His voice we all know was wonderful. Every word, every syllable was like the explosion of a percussion cap. He had hardly uttered the first word when the crowd outside broke for the scene, thinking from the tone of the speaker that a fight was inevitable, if not in hands. In the rush a little fat deputy constable was left in the rear. True to his duty and his obligations as peace officer he made several vain attempts to get inside the ring to separate the supposed combatants. As a last resort he determined to get over the crowd by means of one of the barrels, then standing on end, when alas, the laws of gravitation were asserted—the head caved in and the unlucky official sank to the bottom of the

barrel completely immersed in the expressed juice of the cane; with difficulty he was extricated from his o'er sweet plunge. It is needless to say that the court and Judge G——'s voice both took a short recess. And speaking of the Judge's voice recalls an incident. J. H.——, of New Hampshire, a man of fine personal bearing, an able lawyer, and an eloquent advocate, with Judge G——, who is a small man, defended some Indians for the murder of a white family. At the next Indian payment their bill was presented, some \$2,000.00 perhaps. The chiefs were willing to allow say \$500.00. This J. H. most indignantly refused to take. The matter was recommitted, and the chiefs replied, after consultation, that they should not allow that *big* man anything more, but *that the little fellow with the big voice*, they would give \$500.00 more. The judge humorously remarks that this was the only time he ever knew his voice to serve him a good purpose. I can only say that if his voice has not, his unequalled ability, energy, and talents have so served him, and that his praise is well deserved.

This one loves his title of squire, and always desired to be thus saluted; that one preferred anything else; this one prides himself in his (affected) knowledge of legal terms; that one knew little and cared less; this one followed, as a shadow, this lawyer or that, decided cases before they were tried; that one was afraid of all lawyers, and would sooner follow the advice or be governed by the counsel of the veriest pettifogger; this one was ever so dogmatic and immovable in his opinion, right or wrong, that none could influence him.

Of these, a few, and a few only of the many incidents. In a criminal procedure, the justice sustained a motion to quash an indictment, H. was opposed to the motion. C. addresses the court for twenty minutes, that his client may have time to better reflect. Secretly he suggested to W. to withdraw the motion, and that the renewal would be all right. With this assurance, when court reassembled, the motion was withdrawn, and the defendant courted the most thorough investigation. H. was in high feather. The case was concluded

about day-light in the morning, the justice announced *that the prisoner was discharged*, and court was adjourned.

Henry Michael and H. M'Coy each claimed a miner's spade, and upon it were the initials *H. M.*, answering, as you will see, equally well for either name. The case was tried before Squire ———, and some days occupied in its explanation. After having not less than a dozen witnesses on either side, on the question of ownership, the attorneys commenced the argument—the spade in court. In the midst of the learned discussion, the justice says, "Hold on, let the parties come before me. Henry Michael, you say you put these initials or letters on the spade with a knife?" "Yes, sir." "Well, now sir, take this knife and make the same letters on this table" (a pine table about eighteen feet long by three feet wide in front of the justice). After much hesitation, he succeeded in making the letters, but bearing no resemblance to those on the spade. "Mr. M'Coy, do you come forward" says the justice. Instantly and without trouble, he cuts the letters precisely like those on the spade. "Good," says the justice, "this case is decided—the spade belongs to defendant." "I object to these proceedings and ask an appeal," says ———. "Very well," says the justice, "you can appeal, and I give you notice that I shall *send up the table as a part of the testimony*."

Squire C——— was furnished by an attorney, in whom he had great confidence, under the Blue Book of 1843, with a form for a summons. After the Code of 1857, he followed the same form. Mr. J——— moved to quash. "I will see," said the justice, "If this is like the one George gave me, it is right, otherwise I squash it." Looks and finds he has departed from the form, rises with great disgust, and laying his hand upon the paper, he says "In the name of the State of Iowa, I J. J. C———, squashes this. The defendant goes hence without delay and may the Lord have mercy on his soul."

John Wright was brought before Squire H——— for larceny. He having assumed several names, the information was against John Wright, *alias* Smith, *alias* Jones.

Squire Z——, a very self-important justice, who was called to the aid of Squire H——, as the investigation was about to commence, asked that the *woman* be tried first. "What woman?" says H——. "Why," says Z—— "they mention in the information *Alias* Jane and *Alise* Smith." As the attorney could not put these ladies against the unfortunate John the investigation proceeded.

The first term of the Supreme Court was held at Burlington, commencing November 26, 1838. Chas. Mason, Chief Justice, Joseph Williams and T. S. Wilson Judges; Thornton Boyles, Clerk, and Charles Newton, Reporter. The attorneys admitted at that time were, Corning, W. H. and H. W. Starr, Browning, Grimes, Van Allen, J. B. Teas, Hastings, Viele, *T. S. Parvin*, Love, Rich, Moon, John C. Day, and Harlan.

The judges then presiding, were succeeded by Hastings, Kessing, Greene, Hall, and what is unusual for a new country, it had had few changes in the clerkship. These judges performed circuit duties, and on the organization of the State were succeeded therein by T. S. Wilson, G. H. Williams, Carleton, McKay, Sloan, and Isbell. The successors of these I need not mention.

The first district judges under the present system, whatever may be said of their success, were able lawyers, and discharged faithfully their trusts. Indeed, they were on the whole, men of more than ordinary ability. I cannot here speak of the personal characteristics of these and supreme judges in the "early days." Their grave and dignified bearing, occasionally, however, furnished food for amusement. Judge S—— was of Scotch descent and lived in an early day among the Pottawattamies, on the Slope.

The recent report of the proceedings in Pottawattamie county is a judicial as well as a popular one. Everything said by the judge, by the witnesses, and the points made by the attorneys are spread out at length in the record. Geo. Stikes, Hadley Johnson, Mr. Sharp, and Mr. Ford were the principal attorneys. At the first term the report recites, that in em-

panelling the grand jury the judge "gave the charge *in an able manner that showed his ability in legal matters.*" In one case Mr. Stokes filed his *demurrer* to Mr. ———'s *demurrer*, thus defying the code. And in the same case, says the record, the court proceeded to give the jury their charge having decided in judgment that it was trespass to throw down the fence." The judge each morning had all the members of the bar called by name to ascertain if they were present. It was at this time that Hyde was shown to be a man of good moral character, possessed of the requisite legal qualifications and admitted to practice law in the sixth judicial district. The important case was that of the State vs. Robert and Keys, Jr., for aiding in concealing stolen goods. It seems there was much controversy as to granting separate trials, and which should be tried first. Robert was tried first and the testimony of the witnesses is spread out at length in the *clerk's journal* together with the points made by counsel on questions, and the judge's rulings. In one place it is said.

"The argument concluded, the court charges as follows: '*Gentlemen of the Jury*, I am to address you. I cannot be expected to speak long. I do not want to. You have taken upon you to try the case and a true verdict give. It has been told you that a part of you should come out of the jury room and a part remain, and the jury be discharged. This is to be the last resort. The laws of Iowa have been so framed as to prevent crime. It is permitted that if you do not find the charge in the bill sufficiently sustained in the testimony, but find a lack of evidence of crime it is for you to act thereon. You will not take into consideration to act upon any evidence that is not founded upon fact, or is not interpreted. And you will be aware that much extraneous matter has been introduced in the more solid testimony as well by the prosecutor as by the defense. From the manner in which the case came up, I was satisfied what course would be taken. First the defense tried to get the other released, and to have this one tried, and when they did not succeed they took up the other and agreed

upon separate trials. And when the prosecutor came to present the bill, they agreed on demanding that the case should be tried, and the prosecuting attorney withdrew the bill and consented to try this, or I should have held them to the other." This was all the charge and guided by its close reasoning and by the exposition of the law the jury returned a verdict of *not guilty*. Tradition hath it, that the judge on the rendition of the verdict in a very excited manner exclaimed, "that he would rather take five dollars out of his own pocket that the verdict had been the other way."

The scenes in Judge M——'s court would of themselves make a volume. Of course, I can only cite one or two. By nature he had a clear, strong mind; was ever a student. Wonderful his constitution, and more wonderful his mind. An old habit cost him dear at the very end of life. If we cannot *forget* foibles, we will try to remember them as judicial eccentricities.

N. Moons, now everywhere known by the sobriquet of "Old Moons" is making a speech. The judge is out in front of the door and occasionally puts his head in to thunder—"Stick to the text, "Old Moons." Soon a long eared asinine creature starts his musical strains, and the judge rushing in, exclaims, "One at a time, one at a time, Old Moons." The record does not disclose which stopped first.

Motions are being offered and overruled with great rapidity. An attorney presents one in which he has no confidence, but knows the judge's dread of being reviewed in the supreme court. The attorney thereupon quietly puts his motion, saying at the same time he supposes it will be overruled, and therefore has prepared a bill of exceptions, stating that fact to prepare the case for the appellate court. "No, you don't, Sammy!" exclaimed the judge. "You can't catch the old horse in that way, I admit your motion."

Here is a specimen of the rude eloquence of a defendant before the criminal bar.

"I had a family and a home—a rude home it is true and a

plain and humble family, but they were my all. The deceased robbed me of the one and invaded the sanctity of the other. I had two small sons, a lovely daughter, and a wife, a cherished wife. On returning to that home, the day of the fatal deed I learned the certainty of the maddening truth, and hastened to the field, my rifle still in hand. I know not why I went. I had no fixed design. He met me with a club. I shot him. And though I claim not to have acted in self-defense, I do assert that there was mutual combat. You know the rest. I fled. My family followed. But for the fifteen years I lived at Lockland, I made no secret of the deed I had done. Now time has done its work. The government itself has changed. New laws are framed, and old ones are repealed, and those who then lived have mostly passed away. A different people now are in the land, a different code of morals now prevails. I drank liquor, it is said, and true it is I drank it. Not to have done so *then*, would have been the *exception*. Men high in station did likewise. To treat one's fellow to the flowing cup, was deemed proof positive of genteel training. I may not be held responsible for the vices of society, it is enough that I have been their victim. Those days are past and that loved one is gone, borne down with trouble to an early grave. That lovely daughter is now a hopeless cripple, wearing a haggard face. Of those two boys, who should have been the prop of old age, the one is gone to join his injured mother, as a witness against the dead destroyer of their peace—the other, and my heart sickens within me when I say it, lives, but not to me; with an ear deaf to my calamity he comes not near me.

“I have never been a criminal of choice, but rather the creature of circumstances, beneath the weight of which far better men than I have sunk. I may have been too indifferent of my honor, but never was found faithless to a trust.”

To witness hypocrisy in its most sacred seat; to see at times the triumph of wrong over right, of vice over virtue, of dishonesty over honesty, holding the hope, the prosperity and

reputation of others in his hands, which he might, if so disposed, surrender or sacrifice for the gilded brick—ever sociable and free living—even in a crowd, surrounded by admirers, and those who for a purpose, just or unjust, make appeals to his vanity, meeting every day and every morning while on circuit (and few but follow this in a new country), those who invite to the flowing glass or social game—many of them young and removed for the first time from the restraints of home and old associations—it is to me, as it must be to any one who thinks, remarkable that so few spots should be detected upon the skirts of the professional fame. I have had some acquaintance with those in other States, and have learned more by inquiry and association, and I say here this day that in no other State, for the first twenty-five years of its settlement, was there among the profession so little dissipation, so little gambling. Seldom if ever, have I known a man standing deservedly high, one in whom the courts and solicitors placed confidence, who spent his time at the gaming table or ruined himself by dissipation, and yet judges and lawyers standing the highest do these things in other places. As far as I now remember we have had not one judge who was really censurable in these respects. No body of men have displayed more patriotism, more public spirit, and exercised a more salutary influence in administering the affairs of State. Our State, in its executive, and legislative leaders (I say nothing of its judiciary), may challenge any other for the economy of its administration, and the ability and wisdom of its affairs. And yet if we look to our executives—to those framing our constitutions, revising and making our laws—we shall see how large a share of responsibility has rested upon our early pioneers.

Then, again, no class of men have been more devoted to their State, none more charitable, none more faithful to their obligations, and none more proud of its history and position, civil and military, in the great Federal family.

Those early men differed in their gifts and accomplishments. Some detested the minute labors and complicated

details of the profession. Others were never so well pleased as when engaged in dry technicalities of an ejectment suit or a trial by the record. One man was able and honest, yet of strong prejudices and at times wrong and overbearing in his manners. Another equally able, but more courteous, ever gentle and polite. Some were self-taught, but of great natural power and capacity. Some spoke with wonderful fluency and correctness, and others very indifferently. One is most keen, but rough in sarcasm unequaled. Another had the power of persuasion, moving and making his way as the gentle stream and not as the torrent. One would use his strength imposingly, and at times without mercy. One had beauty of style, the other solemnity. Some had superior address, others greater strength. Some greater eloquence, others deeper learning. Some figured before the court, others were unsurpassed before a jury. Some were at home in one class of cases, others in another. Some persuaded. Some could break down and override, others undermine opposition. Some were mere pettifoggers, following the camp to pick up the offal, or remaining only to bring on the great conflicts. Some placed confidence in their parchments, good looks, good clothes, and rich relations. Some were too proud of the simple name of belonging to the profession, deeming labor dishonorable, and plodding and ploughing through mud and mire to make a living disreputable and derogatory to the dignity of a profession so learned. The great mass, however, were not too proud to do work—were men of common sense, accommodated themselves to their surroundings and the times as they found them—despised the pillaging jackal—the ignorant upstart, the lazy, proud, triflers, hangers-on of circuit and term. As we had only an occasional specimen of such men, as a body, the State and the profession should be justly proud. For myself, I confess that I admire them. I love to think of the *Old Guard*, to look back upon their old campground, the fires there and the figures moving or sitting around. I love to think of the steady march of the old column,

and would forget the unfaithful soldier here, the deserter of the true path there. I admire them, because I look over our constitution and statutes and there see the impress of their minds, I turn the leaves of journals, the tomes innumerable found in the inferior, ultimate and appellate tribunals of the State, examine the records, filling great alcoves and receptacles, and there see the results of their labors, the evidence of their industry. I look abroad and see our school houses, our academies, and our public buildings of every description, and I find in them noble monuments to their liberality, their public spirit, their aid in the religious and educational upbuilding of the State. I inquire for the master spirits who passed through the early days and trials of a frontier life, and find the Old Guard ever in the van ready to do and doing their whole duty.

I think of the proud name of Iowa in military annals, and rejoice to see there Scott, Reid, McFarland, Miller, Clarke, Caldwell, Crocker, Williamson, the Rices, and scores of others, whose names were the synonym for all that was true and patriotic, brave and devoted, honorable and deserving. And I look to the proud position Iowa occupies in the sisterhood of States, her freedom from debt, the wisdom of her laws, the excellence of her institutions, her advancement and progress, her love of freedom for all men and her devotion to the union. While disparaging none others, I can justly attribute much of this glory and success and growth to the energy, active coöperation and public zeal of such men as Mason, Stockton, and others, whose names are printed on almost every page of her judicial, legislative and political history. For all these things I love the Old Guard, love to think of the old column.

But the column has been broken. It is for their surviving compeers and those who have since entered the arena, to maintain and make advance upon the ground already gained. Those gone and many of those living, amid discouragements, animated by hope or struck by care, often weighed down with sickness or old age, or business depression, have per-

formed a noble part in building here a proud, a happy, prosperous and free State, with institutions unexcelled and a name which challenges the admiration of men everywhere.

THE "OLD STONE BUILDING."

THE historical importance of the first regular Capitol of Iowa justifies a detailed description of its erection, because to-day it is the most significant monument of the early history of Iowa.¹ The above remark of one who has devoted so much time and ability to the study of the early history of Iowa will serve as an explanation for my attempt to collect a few facts concerning the "Old Stone Building" on the University Campus.

In January, one thousand eight hundred and thirty-nine, the Territorial Legislature fixed the seat of government at Burlington until a permanent capital should be agreed upon, and public buildings erected for the reception of the Legislature. Commissioners were appointed to choose a spot for the capital, and the chairman, Chauncey Swan, was given authority to superintend the erection of the buildings according to plans agreed upon by the committee.

As a supplement to this act the city was to receive the name of Iowa City, and the United States Congress was asked to donate four sections of land or to allow it to be preempted for the location of the capital of the Territory.

In March, 1839, an act of Congress was approved, which ceded one section of the surveyed lands to the Territory for the purposes required, and early in May the Commissioners drove a stake into the ground upon the present site of the "Old Capitol." The town was then platted, and in August, 1839, the first sale of lots took place. The proceeds from

¹ "Iowa City" a contribution to the Early History of Iowa by B. F. Shambaugh.

the sale of lots, the Legislature enacted, should be used to erect public buildings, and to aid this fund the Territorial Delegate was authorized to draw \$20,000, which Congress had appropriated to aid the Territories in erecting public buildings.

The original plan of the building was designed by Father Mazzuchelli, a Catholic priest, of Dubuque. According to this plan, a copy of which may be seen in the rooms of the Iowa State Historical Society, two cupolas were to surmount the roof instead of one; and the porticos were to extend along the entire front of the building. John F. Rague & Co. obtained the contract to construct the building, and the plans were somewhat altered. After this company had received \$10,000, for work which they had done, they threw up the contract, and the acting commissioner, Chauncey Swan, took charge of the work in person.

The work of breaking up the soil, opening the quarries, etc., was begun in March of 1840, and on July fourth of the same year, the corner stone was laid with appropriate exercises, Governor Lucas being the orator of the day. In January, 1841, a change of management occurred. There was some dissatisfaction with the progress of the work and with the commissioner. Yielding to this feeling the Legislature after receiving the report of the investigating committee, created two new offices out of the old one, but to show their appreciation of Mr. Swan's services he was appointed Superintendent of Public Buildings which gave him complete charge of the work.

The work, however, progressed very slowly. The Legislature had provided no other source of income, for this particular purpose, than the proceeds from the sale of lots. In fact there were no other means at hand, but this source was soon found to be insufficient and very uncertain. Everything was new and the quarries where much of the building stone was obtained had not been located. The only quarry which had been opened was the one at the north end of Clinton

street, but the stone there was of an inferior quality, and much of the stone was brought from the old "Capitol Quarries" ten miles north of the city. The rock for the finer portions was brought from the Cedar quarries on the Cedar river. This of course retarded the work, but the real delay came from lack of funds. The sale of lots was very slow. The first sale in August of '39, showed conclusively that the proceeds would not supply the demands of the capitol; and during the winter the Legislature passed an act by which the lots were appraised at an average valuation of \$300. This had the effect of almost stopping the sales. Gradually, however, the valuation was lowered until the lots were sold for what they would bring; and in 1845, twenty lots were sold at an average of \$14 00 per lot.

In the mean time the acting commissioner, Chauncey Swan, had devised a novel way of securing funds. Men were hired and material was purchased by means of real estate certificates which were to be received by the Territorial agent in payment for lots purchased. His successor went one step farther: Certificates, payable to bearer, were issued to laborers and other creditors, and were to be received by the Territorial Agent for all debts due the Territory. This "Scrip" soon drove out the small amount of money then in circulation and the agent was driven to refuse the certificates. Later the Legislature, although sustaining the agent in his action, provided means for redeeming the repudiated debts. In this way the work on the Capitol continued at intervals for fifteen years, until 1855, when it was pronounced completed, though the portico at the west entrance is still wanting.

The site, upon which the commissioners drove the first stake, and upon which the Capitol now stands, was certainly well chosen. A position more convenient for obtaining building material could not have been found; although despite its nearness it was costly work, owing to the newness of the Territory and the lack of ready transportation. The section chosen for the city forms, as the commissioners reported, a

sort of natural amphitheater with the Capitol located on its left ridge overlooking the river to the west and the city to the east, the main streets of which pass along the "Capitol Square."

In the Journals of the Council¹ for 1839-42 will be found the following description of the building as given by the investigating committee appointed by that body:² "The main walls are massive and built in a substantial and workmanlike manner. The walls in the foundations are six feet thick and sink to an average depth of three feet below the floor of the basement story which itself extends about the same distance below the natural surface of the ground. For a space of twenty-five feet in the middle of the east side, the foundation is sunk fourteen feet below the floor of the basement, on account of adjacent interior vaults, which are of the same depth. * * * The walls of the basement story are four feet thick and built with inverted arches under all openings for doors and windows in order to distribute the pressure of the whole superstructure uniformly throughout the entire length of the foundation walls. The walls of the upper stories will vary from two to three feet in thickness according to their position. * * * The building is one hundred and twenty feet long north and south and sixty feet east and west. It is to be ornamented by magnificent porticos, one on each side, supported by four massive pillars. The exterior of the building is thus described: From the window sills of the basement, which will be level with the pavements, to the water table, the face of the walls is made with large blocks of cut stone. The water-table is composed of about fifty blocks, sixteen inches thick, from seven to eight feet long and said to weigh from six to eight thousand pounds each after they were dressed. These blocks form for the heavy basement walls a kind of coping; from the outside edge of which, the walls of the upper story make an offset of sixteen inches, leaving the water-table for that width exposed to view

¹ P. 202.

² This description has been corrected somewhat where it was found faulty. The measurements are those given by Dr. Shambaugh.

entirely around the building which adds much to the beauty and apparent strength of the work. On each of the fronts there are eight pilasters, three feet and ten inches wide and projecting twelve inches from the face of the walls. These are to be surmounted by cut stone caps supporting the architrave, thus giving the building the appearance of being studded by pillars. * * * The roof is surmounted by a cupola; the base is an octagon supported by the interior vestibule walls. Upon this base stand eight Corinthian columns crowned with handsome capitals supporting a spherical roof. Within the circle of the columns the space is enclosed by eight long windows placed also in an octagonal form, by which light is communicated to the stairway descending in the middle of the building through the successive stories. The interior arrangements are as follows. The basement story is entered by two doors in the opposite ends, both opening into a hall seven feet wide, which runs directly through the building north and south, dividing it into two equal parts. There are four rooms on each side about twenty feet square, designed for committee rooms; there is also a * * * fire proof vault, arched with brick, and covered with grouted masonry more than three feet thick for the safety of public documents. On the next floor there is the same division north and south and a broad hall or vestibule east and west entered from the porticos from each side of the building. North of the vestibule, east side, there is a room forty-three by twenty-two and a half feet, designed for the supreme court. A corresponding room on the south side of the vestibule, is designed for the Secretary of the Territory. West of the north and south hall are four rooms, equal in size, designed for the Governor, Auditor, Treasurer, and the Library. On the upper floor the north and south hall is omitted. In the south wing is the Representative hall, fifty-two by forty-three feet in the clear. In the north hall are the Council Chamber and three small committee rooms, cut off from the west side of it."

In 1840 the Legislature had limited the cost of the building

to \$51,000. It soon became evident, however, that this sum would not be sufficient to complete the structure as it had been designed and when it was finished, \$112,000.00, or thereabouts, had been expended.¹ After the Territory became a state about \$19,500 was appropriated to aid the work beside what was obtained by the sale of Iowa City lots. By the close of 1842, several rooms were so far completed as to enable the legislature to move their effects from the old Butler building on Washington street, where the session of 1841 was held; and the Capitol then became the home of our legislators until by the constitution of 1857, the Capital of the State was moved to Des Moines. The same clause, however, which removed the Capital from Iowa City, established the University of Iowa permanently at this place; and the "Old Capitol" which had been the seat of government then became the center of learning in the State and the home of the grandest of Iowa's many fine institutions.

The "Capitol Square," is now the University Campus. The University like the State has rapidly outgrown its original quarters, and the Campus is now dotted with more spacious and modern buildings. The one building, however, which remains the center of attraction as well as the center of the group is the "Capitol" building. Visitors look with curiosity at its old weather-beaten exterior, or from the terrace surrounding its cupola, they view with admiration the landscape, extending to the west, and south with the river winding its way among the hills until it passes from sight behind the old "Indian Lookout;" or see nestled in its "natural amphitheater" the busy little city, forgetting in the anxiety of its present problems those times when the city was new and the greatest problems of the city fathers were to secure the sale of lots and thus "boom" the city as well as to carry on their private enterprises.

¹ This is the computation of Dr. Shambaugh, another computation by Mr. Lathrop reckons \$123,000.

The old settler, too, standing under the portico, recalls for the benefit of curious listeners, how in '39 the first Fourth of July celebration was held, on its site, under the Stars and Stripes which floated from the top of a sturdy young oak tree, stripped of its branches to serve for a flag-staff; or talks of the brave men who left its halls of learning to answer their country's call for volunteers in '61.

But let us take one more glance into its busy precincts before we wend our way into the throng of eager workers who never hear its mute eloquence, or see its covered beauty. Inside Father Time has likewise been at work. The walls and ceiling are stained and darkened where they have not been defaced by the remodeler's hand or the paper-hanger's deft fingers. We saunter to the stairs leading to the basement story and glance up between the ceiling and the winding stairway into the old dome. Our curiosity is well satisfied for there is to be seen the only remaining fragment of the earliest attempt at decoration. The frescoing, perhaps anything but magnificent, though not inappropriate, still remains unaltered in the old dome where from its lofty height it has defied the busy hands to which the lower walls and ceilings have succumbed.

Through the open door to the south of the main hall comes the busy click of the typewriter and announces the office of the President of the University, while the steady stream of visitors passing in and out of the door leading into the north room suggests the presence of the Secretary. Along the west side of the north and south hall are located the Chairs of Latin, German and Economics. We ascend the winding stairs and enter the old "Assembly" room. Here, too, a change has taken place. In this old hall which has so often echoed the eloquence and patriotism of Iowa's great leaders, the law students now receive their first lessons in states-craft which prepare them to enter that new assembly room and there carry on the work so ably begun by Iowa's early statesmen. Across the hall in the old Council Chamber as, though designed

on account of its appropriateness, is to be found the law library, containing the fitting counselors of all those who intend to be at all informed concerning the laws of our State or nation.

As we pass out and down the stairs there comes over us a peculiar feeling, and a true one I believe, that a new building, however magnificent and costly, can never take the place of the old one, surrounded as it is and always will be by so many old associations and facts of historic interest. It is a sort of link connecting us with the past, and we would not break the link if we could. In its walls, as in the face of an old man, we read the trials and successes of the beginning of our statehood; and its later history is the history of our State University.¹

H. G. PLUM.

Iowa City, December, 1895.

THE OLD AND THE NEW

HAPPENING upon a cut of the old Capitol Building at Belmont, Wis., where the first Territorial Legislature of Wisconsin and Iowa convened, the contrast between the Old and the New was so marked that I should have been inclined to doubt the accuracy of the cut, had I not been a witness to the Old as I have been also a witness to the New. Only half a century has transformed the old unpainted two-story wooden structure without cornice or cupola into two magnificent buildings of hewn stone crowned with gilded domes. The interiors show a still greater contrast.

The Capitol at Des Moines probably bears no greater proportion to the wealth of the State than did the Capitol at Belmont to the Territory.

¹ NOTE.—For the materials of this sketch I am very much indebted to Dr. Shambaugh's monograph on "Iowa City;" also to the article on "The Capitals and Capitols of Iowa," by Mr. Lathrop, in the July number of *THE HISTORICAL RECORD* for 1888.

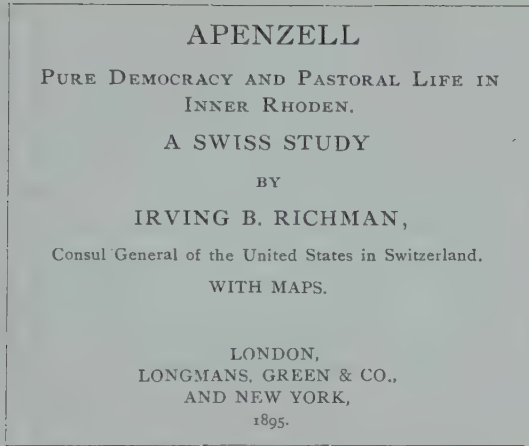
Personal acquaintance with many of the legislators of 1837 emboldens me to say that their superiors are not found in the legislative halls of to-day.

The hill overlooking the Des Moines can not compare in beauty with the mounds between which the old Capitol stood, and yet the plain itself was at a greater height above the sea than any part of Iowa except portions of the northwest corner.

The gem of the three Platte Mounds was a perfect cone, as if some giant hand had seized the plastic earth and had raised it some two hundred feet and held it there until hardened into permanence.

In those early days some attention was paid to horse racing (not for the professed purpose of "improving the breed of horses") but for the excitement attending the transfer of money from the pocket of the owner of the beaten horse to that of the winner. Around the little mound spoken of an ideal race track was constructed, just one mile in length, the exact circumference of the base of the mound. The grassy sides of the mound formed a natural "grand stand," whose occupants could pass around the mound upon the smaller circle nearer the apex, and so keep the race in view from start to finish. With the loss of the Capital the prestige of the track departed.

The building of the railroad has left Belmont a farm—but the beauty of the scene as viewed from the summit of either of the mounds can never be lost to the memory of one whose home for many years was but a short distance away. "A ride to the mounds" was upon the program for the entertainment of Eastern visitors, one of whom, after looking into Illinois and Iowa across the billowy prairie, remarked, "What a sea of land!" Nothing more expressive could have been uttered.



THE author will be recognized as an Iowan by birth, who served two terms in the Assembly as representative for Muscatine.

Mr. Richman was appointed to his present position by President Cleveland soon after his inauguration in 1893.

In 1893 appeared Mr. Richman's first work—"John Brown among the Quakers and other sketches," which proved his thoroughness in historic research, and his felicitous manner of presentation of the results of his study.

The high standard he had set in his first venture is fully maintained in the work before us.

The author's residence is at St. Gall, in a canton bordering upon that of which he writes.

Appenzell is divided into two half cantons—Inner Rhoden and Ausser Rhoden. It is of Inner Rhoden the author speaks. The territory embraces only sixty square miles. Its surface is very uneven, and lies at an average height above the sea of nearly 3,000 feet. Four lakes are found nestled among the hills. The occupation of the people is largely pastoral.

The people in the times of Roman supremacy were in the province of Rhetia, but were never Romanized. In the con-

test between *Alemans* and *Franks* they remained untouched until about the middle of the sixth century, when they came under the rule of the Merovingian dynasty. In the early part of the eighth century the Monastery of St. Gall became a center of light and knowledge, and after the middle of the ninth century, a source of power and of law for the provinces of St. Gall and of Appenzell.

By degrees the Abbot acquired possession of much land. An Abbot founded a church within Appenzell called Abbot's Cell (Appenzell). The tyranny of the Abbot of St. Gall became insupportable, and upon September 26, 1377, Appenzell formed an alliance with several Imperial Cities, and framed a constitution. Up to this time the people had maintained the Alemanic custom of family or clan organization. With the formation of the league with cities, there came also the consolidation of the clans (Rhoden). The league went to pieces. Appenzell, joined by Canton Schwyz, made a bold stand for freedom, and was remarkably successful. In 1425 the people were declared under bann by the Pope, but as they did not know the meaning of the word *bann*, they "laughed the interdict to scorn." For nearly one hundred years the people were trained to conflict and became expert soldiers, so that their services have been sought by European nations when at war from the time of Charles the Bold to Napoleon.

In 1513 Appenzell was admitted to the Swiss Confederation. The strife between Protestants and Catholics raged with violence in this little territory. Fifteen hundred and ninety-seven witnessed a division of the lands into two half-cantons—Inner Rhoden and Ausser Rhoden, the former strongly Catholic, the latter as strongly Protestant. Early in 1798, Inner Rhoden gave its adhesion to the Helvetic Republic organized by France, and lost for the time its independence, but after the fall of Napoleon, reënacted its constitution which had been in force, though unwritten, for three hundred years.

Between the Sonderbund, a union of the Catholic pro-

vinces, and the Diet, the sympathies of Inner Rhoden were with the Sonderbund, but no active part was taken upon either side. In 1874, Inner Rhoden ratified the constitution of the Confederation.

Other chapters of great interest relate to the politics—the laws and administration of Justice—cantonal and domestic economy—Education, sanitation and charity, and domestic and social life. These will not admit of abbreviation.

“The history of this land forms a peculiar link in the great chain of popular uprisings in the Middle Ages. * * * It shows what a small nation resolute for freedom can accomplish against the powers of time.” P.

STATE HISTORICAL SOCIETY OF IOWA.

ITS WORK AND ITS NEED.

THE STATE HISTORICAL SOCIETY OF IOWA was organized “under the auspices of the State University of Iowa” in accordance with an act of the Sixth General Assembly, in 1857. Its Board of Curators consists of eighteen members—nine of whom are appointed biennially by the Governor, and nine by the Society at its biennial meeting in June of each odd numbered year. The nine appointed by the Society have special charge of the collections and supervise the publications of the Society: they hold monthly meetings for transaction of business.

As the University lacked room for the collections, the Society has been compelled to rent suitable quarters.

The Corresponding Secretary, who attends to exchanges with other similar organizations, receives a salary of One Hundred Dollars a year.

The Custodian of the Library opens the same two days of each week, for which service he receives Three Dollars a week.

The Society publishes a quarterly of forty-eight pages,

having as its leading article a biographical sketch of some prominent Iowan with a portrait. Its other matter is largely historic. The Editor is paid for his services Thirty-Five Dollars a quarter.

The cost of printing and of phototypes varies for each issue from Eighty to Eighty-Five Dollars. Other regular expenditures for expressage, postage, fuel and lights are about Fifty Dollars a year.

The only resource the Society has wherewith to meet these annual expenditures is in a permanent State appropriation of One Thousand Dollars.

Four years ago the Legislature appropriated a special fund of One Thousand Dollars for special publication of matters of great historic value, and for binding of newspaper files and pamphlets received in exchange with other Historical Societies.

The publications last referred to are:

1. Prehistoric Iowa, SAMUEL CALVIN, PH.D.
2. Indian Tribes in Iowa, J. L. PICKARD.
3. Louisiana purchase as affecting Iowa, C. M. HOBBY, M.D.
4. Introduction of Common Law into Iowa, EMLIN McCLAIN, LL. D.
5. Sketch of early Medical Practitioners in the Territory of Iowa, W. WATSON, M.D.
6. Sketch of Early Teachers, L. F. PARKER, A.M.
7. Sketch of Early Members of the Bar, T. S. PARVIN, LL.D.
8. Sketch of Members of the Clerical Profession in Iowa before 1846, compiled by J. L. PICKARD.
9. Some Fragments of Iowa History gathered from Records of Congress, ELIZABETH H. AVERY, A.M.
10. History of Iowa City as the Capital of Iowa, B. F. SHAMBAUGH, PH.D.
11. History of the Johnson County Claim Association, B. F. SHAMBAUGH, PH.D.
12. The Amish Mennonites in Iowa, BARTHINIUS L. WICK, LL.B.

13. Documentary Material drawn from original sources of the History of Iowa, No. 1, B. F. SHAMBAUGH, PH.D.
14. Same, No. 2.
15. In Press, No. 3.

Our binding of newspaper files has been kept well in hand, as also the binding of valuable pamphlets received in exchange for our own publications.

II. THE SOCIETY'S NEED.

Through its publications and the energy of its Corresponding Secretary the Society has within the past ten years greatly enlarged its collections by way of exchange. It is now in regular correspondence with all the leading Historical Societies of the United States, and with several societies of Europe.

The rooms of the Society are sought by students in constantly increasing numbers, but means are not at hand so that the rooms can be kept open every day.

A Librarian is needed who can classify the material on hand and can be of service to students of history.

The expenses for binding increase with the increase of collections. The greater need is for means wherewith to continue the work so thoroughly begun by Dr. Shambaugh. His work thus far has been a work of love on his part for which he has received not a penny from the Society. For one year he devoted himself to the preparation of his first two volumes, drawing largely upon the collections of the Society. His work upon the "Johnson County Claim Association" is widely sought for and is to-day invaluable to those who through this Association held valid claims to lands before the United States Government began its registry in the Territory of Iowa.

The Society will ask from the Legislature the small amount of Four Thousand Dollars for the next biennial period and for the following purposes:

For Librarian's services, . . .	\$ 500 a year	\$1,000
For continuation of publications, .	1,000 a year	2,000

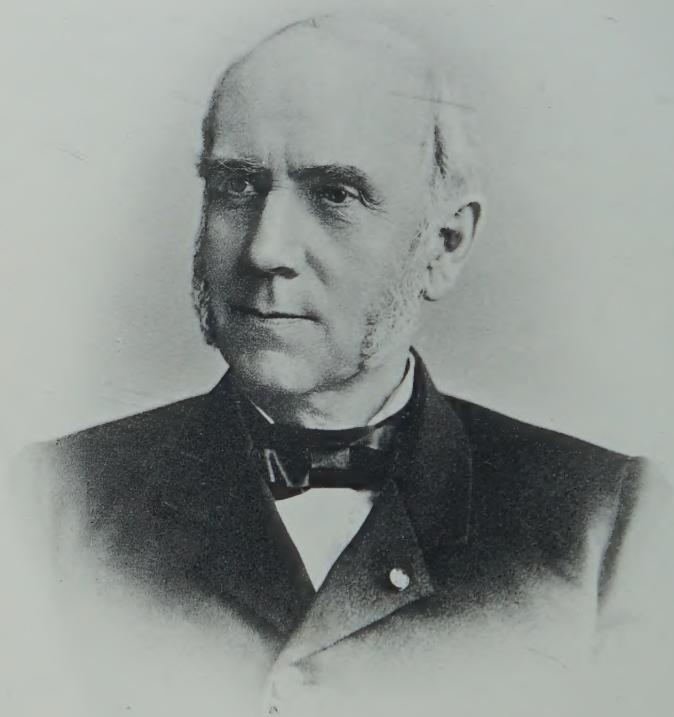
For binding,	250 a year	500
For Custodian's services, . . .	250 a year	500
	<hr/>	<hr/>
	\$2,000	\$4,000

The Society trusts to the liberality of the people as represented in General Assembly for this slight recognition of its services in rescuing from oblivion matters of historic interest which increase rapidly in value as the actors therein pass from the stage.

J. L. PICKARD, *President.*

RECENT DEATH.

At Grinnell, January 30th, 1896, George F. Magoun, DD. Dr. Magoun graduated at Bowdoin College, 1841, entered Andover Theological Seminary, spent two years teaching at Platteville, Wis. and Galena, Ill. Entered the service of the H. M. Society as pastor at New Diggings, Wis., in 1847; went to Galena Ill., as pastor of Second Presbyterian Church in 1848. Left Galena 1851, and practiced law at Davenport, Iowa, preached in Lyons from 1860 to 1864; was elected President of Iowa College 1864 and continued in the office till 1884. Dr. Magoun was a leader in educational and church matters in Iowa.



Bureau

Rev. G. Wright